



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**The Auto Connection, Inc.
FOR
Unpermitted Discharge**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and The Auto Connection (Auto Connection), for the purpose of resolving certain violations of the State Water Control Law and the applicable law and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "The Auto Connection, Inc." means The Auto Connection, Inc. or Auto Connection, a business entity and franchise authorized to do business in Virginia. Auto Connection is a "person" within the meaning of the laws of the Commonwealth of Virginia, as described in Va. Code § 62.1-44.3.
2. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "Facility" means the Auto Connection branch located at 5300 Midlothian Turnpike, Richmond, Virginia.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "PRO" means the DEQ Piedmont Regional Office, located in Glen Allen, Virginia.
12. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
13. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause

pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

14. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
15. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. “Va. Code” means the Code of Virginia (1950), as amended.
18. “VAC” means the Virginia Administrative Code.
19. “VPDES” means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. On February 6, 2019, DEQ staff received notification from the City of Richmond, Department of Public Utilities (DPU) concerning an unknown discharge into Reedy Creek. DEQ and DPU staff conducted a joint investigation on February 8, 2019, tracing the discharge to an oil/water separator at an Auto Connection franchise leasing the building located at 5300 Midlothian Turnpike in Richmond.
2. Auto Connection cleans cars at the location in preparation for sale. The oil/water separator was receiving runoff from floor drains within the facility’s cleaning and detailing bays. Various car cleaning products, de-greasers, strippers and petroleum-based products were used in the area. There were no reported impacts to aquatic resources resulting from the discharge.
3. During the 2016 Water Quality Assessment 305(b)/303(d) Integrated Report, the segment of Reedy Creek was considered a Category 4A water (“Impaired or threatened for one or more designated uses, but does not require a Total Maximum Daily Load (TMDL) because the TMDL for specific pollutant(s) is complete and approved by the U.S. Environmental Protection Agency (EPA).”) The Recreation Use was impaired due to E. coli exceedances. The Aquatic Life Use is considered fully supporting. The Wildlife Use and Fish Consumption Use were not assessed. The site is located within the study area for the James River and Tributaries – City of Richmond Bacterial TMDL approved by EPA on November 4, 2010 and the Virginia State Water Control Board on June 29, 2012. It site is also located in the Chesapeake Bay watershed. The Chesapeake Bay TMDL was approved by the EPA on December 29, 2010. The TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect the dissolved oxygen and

submerged aquatic vegetation (SAV) criteria in the Chesapeake Bay and its tidal tributaries. Reedy Creek is considered a Tier 1 water.

4. DEQ issued NOV #W2019-03-PRO-202 on March 26, 2019 for the discharge, and met with representatives from Auto Connection on May 9, 2019. Auto Connection conducted an independent investigation of the spill, and determined that the oil/water separator was the source of the discharge. At the time of the meeting, Auto Connection had terminated use of the oil/water separator and moved cleaning operations for vehicles to another location.
5. Va. Code § 62.1-44.5(A) states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
6. The Regulation, at 9 VAC 25-31-50(A), also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into State waters sewage, industrial wastes or other wastes.
7. Va. Code § 62.1-44.5(B) and 9 VAC 25-31-50(B) state that any person who discharges to State waters shall notify DEQ within 24 hours of discovery of the discharge.
8. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
9. The Department has issued no permits or certificates to Auto Connection for the discharge.
10. Reedy Creek is a surface water located wholly within the Commonwealth and is a “State water” under State Water Control Law.
11. Based on the results of the Department’s investigation and other information collected, the Board concludes that Auto Connection violated Va. Code § 62.1-44.5(A) and the Regulation at 9 VAC 25-31-50(A) by discharging a pollutant without a Permit, as described in this Section. Further, the Board concludes that the Auto Connection failed to provide timely notice in violation of Va. Code § 62.1-44. 5(B) and the Regulation at 9 VAC 25-31-50(B).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Auto Connection, and Auto Connection agrees to:

1. Pay a civil charge of **\$9,750 within 30 days** of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Auto Connection shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Auto Connection shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Auto Connection for good cause shown by the Auto Connection, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2019-03-PRO-202 dated March 26, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Auto Connection admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Auto Connection consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Auto Connection declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Auto Connection to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the

Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Auto Connection shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Auto Connection shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Auto Connection shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Auto Connection. Nevertheless, Auto Connection agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Auto Connection has completed all of the requirements of the Order.

- b. Auto Connection petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Auto Connection.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Auto Connection from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Auto Connection and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Auto Connection certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Auto Connection to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Auto Connection.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Auto Connection voluntarily agrees to the issuance of this Order.

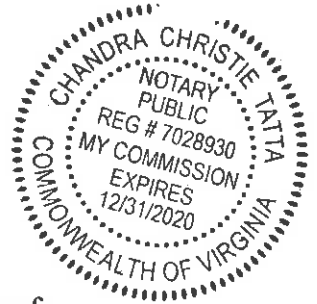
And it is so ORDERED this _____ day of _____, 2019.

James J. Golden, Regional Director
Department of Environmental Quality

The Auto Connection, Inc. voluntarily agrees to the issuance of this Order.

Date: 7/10/19 By: [Signature], Vice President / CFO
Barry Sifen The Auto Connection

Commonwealth of Virginia
City/County of Virginia Beach



The foregoing document was signed and acknowledged before me this 10th day of

July, 2019, by Barry Sifen on behalf of The Auto Connection.

Chandra Christie Tatta
Notary Public

7028930
Registration No.

My commission expires: 12/31/20

Notary seal: